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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,998	01/16/2004	Charles W. Klein	4577-4000US	8676
27123	7590	07/14/2008		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EXAMINER BROWN, MICHAEL A	
			ART UNIT 3772	PAPER NUMBER
			NOTIFICATION DATE 07/14/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/759,998	Applicant(s) KLEIN ET AL.	
	Examiner MICHAEL BROWN	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8 and 12-54 is/are pending in the application.
- 4a) Of the above claim(s) 41-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-8, 12-40 and 54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Note: A final search of the prior art provided two references that had to be used to reject allow of the claims. The examiner apologizes to the attorney and the applicant for any inconvenience incurred because of this decision. The examiner is willing to have a telephonic interview in order to attempt to expedite the prosecution of this application.

Claim Rejections - 35 USC § 112

Claims 12-40 and 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, there is a lack of antecedent basis for the constituents of the device.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 4, 8, 12-13, 17, 19-26, 28, 30, 34-35, 39 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Komatsu.

Komatsu discloses in figures 1-9 a selective alarm device for awakening or alerting the user comprising a vibrating member 50, comprising at least two regions of material, a vibration transmission region 51, and a vibration dampening region 56, the vibration transmission region is located between the vibration mechanism and the

surface of the vibration member (fig. 3), a sensor/controller 12, the vibration dampening region has a region having a greater density than the vibration transmission region, a timer 19, the vibration dampening region includes a volume of material, the vibrating member includes vinyl (col. 8, lines 67-68), the controller is attached via hardware (circuitry), a switch (to turn the device off and on), a supplemental alarm (music), a snooze alarm (the alarm can be a snooze type), the vibrating member is flat (fig. 3), and includes a water resistant material (vinyl), the vibration mechanism and the other components are removable and the surface facing away from the vibration mechanism includes features (a flat surface) to maintain the vibrating member in a fixed position.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5-7, 14-16, 18, 27, 29, 31-33, 36-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsu in view of Sleichter.

Komatsu discloses in figures 1-8 a selective alarm device, substantially as claimed. However, Komatsu doesn't disclose the vibration member containing a soft synthetic rubber, the vibration dampening region including a plurality of discontinuous islands of material, or an open cell foam, what the density of the foam is, the alarm being a heart monitor, the controller being wireless, the vibrating mechanism being a motor that rotates, a weight detecting element, the two vibrating elements being

Art Unit: 3772

controlled by a single control, the device having two alarms, an alarm clock or a backup alarm. Sleichter teaches in figures 1-6 an alarm device comprising a vibration member (the entire device) having a soft, synthetic foam (the foam of 14), a dampening region (26, 28), having discontinuous regions (they are discontinuous where 12s are located), a foam material 14, the vibrating mechanism being a motor (the motor inside of 12), a weight detecting element (built into the controller) and different alarms. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the structural elements as taught by Sleichter could be incorporated into Komatsu in order to alert a user. The soft foam material could be substituted for the vinyl bed disclosed by Komatsu because both material as soft but supportive to a body. The discontinuous island of material would allow the vibrating elements to be located along various location on the vibrating element. The open cell foam is a soft type of foam. The range of the density of the foam is a design choice. The alarm could be a heart monitor, two alarms or an alarm clock because all of these types of alarms are old and well known in the art. The two vibrating elements being control by a single control is a design choice.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL BROWN whose telephone number is (571)272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/
Primary Examiner, Art Unit 3772